

**Parliamentary Joint Committee on the
Australian Crime Commission**

**Inquiry into trafficking in women for
sexual servitude**

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Submission to Parliamentary Joint Committee inquiry into ACC's response to Trafficking in Persons

Attorney-General's Department

1. Introduction

The Australian Government is committed to combating trafficking in persons. It is an important challenge. Trafficking in persons is a major form of transnational crime, and has a terrible impact on its victims, many of whom are poor and vulnerable. The Australian Government has a wide and comprehensive suite of measures to combat trafficking in persons, set out in detail at **Attachment A** to this submission.

Combating trafficking effectively requires a sound understanding of this complex crime. This submission addresses the complexities faced when critically assessing the scope of trafficking in persons, showing that the wide range of definitions and estimates makes accurate estimates difficult to reach. The submission also covers the Commonwealth legislative framework, examining existing laws and areas under consideration for further legislation.

Trafficking in persons is a complex issue requiring a whole-of-government response. The Commonwealth response is well co-ordinated across a range of relevant agencies and addresses all points in the trafficking cycle. It is delivering results. State, Territory and Local governments also have an important law enforcement, legislative, regulatory and victim support role to play in the fight against trafficking in persons.

2. Understanding Trafficking in Persons

Trafficking in persons is a growing issue worldwide. As research and awareness increases, governments and national and international organisations and networks are developing a range of policy and program responses.¹ However, while information on trafficking has grown as the issue has gained greater international recognition and attention, there are still no universally agreed estimates reflecting actual numbers of trafficked persons. Governments, international agencies, NGOs and researchers agree that there is a dearth of reliable data on human trafficking. At best, existing estimates from all these sources are very broad.² There are several difficulties in identifying and measuring the dimensions of trafficking in persons.

¹ Annuska Derks, *Combating Trafficking in South-East Asia: A Review of Policy and Program Responses*, International Organisation for Migration, 2000, viewed 29 August 2003, <<http://www.iom.int>>.

² Kristiina Kangaspunta, Mapping the Inhuman Trade: Preliminary findings of the human trafficking database, Global Program against Trafficking in Human Beings: Paper presented at the plenary presentation of the United Nations Office on Drugs and Crime Global Program against Trafficking at the Commission on Crime Prevention and Criminal Justice 12th Session 13-22 May 2003.

Defining and measuring trafficking in persons

As attention to the phenomenon has grown so have the number of definitions of trafficking.³ This has led to inconsistent conceptual and practical approaches to the identification and prevention of trafficking across jurisdictions and disciplines.

Despite a diverse collection of definitions, many countries lack specific legislation governing trafficking in persons. Where legislation does exist, the absence of precise, effective and consistent definitions makes it difficult to achieve accurate comparable estimates of the number of persons trafficked globally, regionally and locally. In some cases this problem is amplified because no clear definitional distinction is drawn between trafficking in persons, people smuggling, and other forms of irregular migration.

Implementation of trafficking legislation also varies considerably between countries, skewing data across regions and undermining the reliability of international comparisons and estimates. Where legislation is rarely or ineffectively implemented, any statistics on the number of police recorded crimes, prosecutions and convictions are unlikely to reflect actual levels of trafficking. Complicating this is the fact that, due to inadequate legislation or inadequate practice, many countries mix data on trafficking, people smuggling, and irregular migration.⁴ This makes it impossible to extract the individual figures relating to trafficking in persons and thus to properly gauge the extent of the phenomenon.

The clandestine and criminal nature of trafficking contributes to these difficulties, ensuring that many instances of trafficking never become known to authorities, despite their best efforts. Similarly, the reluctance of victims to report their experiences to authorities or to testify in court cases against traffickers diminishes the number of reported cases and limits available data. This reluctance is often fuelled by fears of deportation, where the victim is an illegal immigrant, or of retaliation by traffickers.⁵

It is also significant that data on trafficking is often more readily available in industrialised countries than in the developing world.⁶ This may be attributed in part to the greater attention paid to this issue by governments in such countries, their willingness to share information about the problem, closer focus by NGOs and the media, and the existence of more effective legislative and law enforcement mechanisms. It should not be seen as an indication that trafficking in persons is necessarily a greater problem in industrialised countries. For example, the US Department of State annual Trafficking in Persons Report notes that “in some cases information was not available and countries were not included”.⁷

³ Kara Abramson, ‘Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol’, (2003) 44 *Harvard International Law Journal* 473, 481.

⁴ Frank Laczko, *Human Trafficking: The Need for Better Data*, International Organisation for Migration, 2002, viewed 29 August 2003, <<http://www.migrationinformation.org>>.

⁵ Ibid.

⁶ Kangaspunta, above n 2.

⁷ United States Department of State, *Trafficking in Persons Report 2003*, 14, viewed 29 August 2003, <<http://www.state.gov/g/tip/rls/tiprpt/2003/>>.

Recent reports on trafficking in persons

On June 11, 2003 the US State Department released its third annual Trafficking in Persons Report (the Report). Under the Victims of Trafficking and Violence Protection Act 2000 the State Department is obligated to issue the report each year.⁸ The Report describes recent trends in international human trafficking, how different countries are addressing the problem, and US government efforts to combat trafficking. The Report places countries in one of three tiers based on their compliance with the minimum standards for combating trafficking as set out in the Victims of Trafficking and Violence Protection Act. Only countries that are deemed to be “a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking” are listed. A “significant number” is set at one hundred or more.

While the US report provides a valuable study of human trafficking, it has been criticised for failing to provide hard figures on the number of trafficked persons globally. It has also been criticised for adopting flawed methodology such as using statistics inconsistently, relying on incomplete or generalised data, and for omitting countries on the basis of insufficient data.⁹ According to critics, some countries were also moved up a tier despite little or no progress in their anti-trafficking efforts.

Australia was not listed in the Report as it was not deemed to fall within the “significant number” category. However, ironically, the more Australia improves its ability to identify trafficked persons and respond with appropriate law enforcement and prosecution responses, the more likely it is to reach the one hundred figure and be listed. By contrast, countries which decline to develop or provide the data remain unlisted.

On 13 May 2003, the United Nations Office on Drugs and Crime (UNODC) listed Australia as the tenth main destination for victims of human trafficking. This figure was drawn from an analysis of the database of the Global Program Against Trafficking in Human Beings (GPAT).

In this analysis, country rankings were based on the number of sources in which countries were named as destination countries. Sources listed in the GPAT database referring to Australia included reports of the various UN bodies and the Swedish and US governments, as well as a number of press articles, some up to a decade out of date. Only one of the 21 items actually focused exclusively on Australia (a 2000 Australian Institute of Criminology report) and many simply mentioned Australia in passing while examining trafficking in Europe, for example. Yet, on the strength of how many times the word “Australia” appeared, the UNODC made a generalisation about a complex and important issue. There were no apparent mechanisms to ensure that sources referring to the same cases of trafficking were not counted more than once. Sources were assessed as an aggregated whole rather than on an annual basis and GPAT’s weighting of the reliability of sources was unsatisfactory.

⁸ United States Department of Justice, viewed 1 September 2003, <<http://www.justice.gov/trafficking.htm>>.

⁹ Brian McCarthy, ‘U.S. State Department Releases Third Annual Trafficking in Persons Report’ (2003) 19 *International Enforcement Law Reporter* 303, 305; Human Rights Watch, *U.S State Department Trafficking Report Undercut by Lack of Analysis*, press release, 11 June 2003, viewed 28 August 2003, <<http://www.hrw.org/about/projects/traffcamp/intro.html>>.

Even so, in presenting its findings, GPAT noted that outcomes may be weighted against industrialised countries, due to the fact that official information from these countries was more readily available and the press and NGOs more active.

While both the US State Department Report and the GPAT database represent important moves towards monitoring trafficking and implementing preventive measures, the difficulties surrounding the collection of data on trafficking must be taken into consideration when assessing the reliability of their statistical analyses, and, of greater concern, broad statements about a country's "ranking".

Current estimates

The difficulties associated with defining and identifying instances of trafficking are apparent in the degree to which estimates of the numbers of trafficked persons vary.

Experts estimate that anywhere from 700,000 to four million persons are trafficked annually worldwide.¹⁰ A recent US Government estimate puts the figure between approximately 800,000 and 900,000 people and indicates that between 18,000 and 20,000 of these are trafficked into the United States.¹¹ Other estimates suggest that around 50,000 women and children are trafficked into the United States in any one year.¹² In Europe the figure is estimated between 200,000 and 500,000 women and children.¹³ In South Asia between 200,000 and 225,000 women and children are estimated to be trafficked to the rest of the world.¹⁴

No consensus has been reached about the size and extent of the problem in Australia. As with the case globally, estimates vary due to lack of reliable statistical data and the differing definitions of trafficking in persons being applied.¹⁵ Coupled with the likelihood that it is an underreported crime, these problems have led the Australian Institute of Criminology to conclude that the limited statistical data available on trafficking provides 'very few insights into the incidence of trafficking' in Australia.¹⁶ And, as noted, the US Department of State did not list Australia as a country with a significant number of trafficking victims.

Trafficking Protocol – an internationally accepted baseline definition

An international definition of trafficking as a distinct phenomenon has only emerged in recent years.¹⁷ The first widely accepted and internationally agreed definition is embodied in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, adopted by resolution A/RES/55/25 of the UN General Assembly on 15 November 2000 (the Trafficking Protocol). As at 28 August 2003 the Protocol had 117 signatures and 31 parties. This instrument is one of three Protocols supplementing the United Nations Convention against Transnational

¹⁰ US Department of State, *Trafficking in Persons*, [Report Home Page](#), Released by the Office to Monitor and Combat Trafficking in Persons, United States, 5 June 2002.

¹¹ Dr Kerry Carrington & Jane Hearn, *Trafficking and the Sex Industry: from Impunity to Protection*, Parliamentary Library Current Issues Brief No. 28, 2002-2003, 7.

¹² Sean Murphy, 'International trafficking in persons, especially women and children' (2001) 95 *The American Journal of International Law* 408 in Carrington and Hearn, above n 12, 4.

¹³ Ian Taylor and Ruth Jamison, 'Sex Trafficking and the Mainstream of Market Culture', (1999) 32 *Crime, Law & Social Change* 257 in Carrington and Hearn, above n 12, 4.

¹⁴ Derks, above n 1, 16.

¹⁵ Carrington and Hearn, above n 12, 1.

¹⁶ In a Report prepared by Fiona David, *Human Smuggling and Trafficking: An Overview of the Response at the Federal Level*, Australian Institute of Criminology, Canberra, 2000, 10 in Carrington and Hearn, above n 11, 5.

¹⁷ Lazcko, above n 4.

Organized Crime. As at 28 August 2003 the Convention had 147 signatures and 41 parties. Both documents can be found at <http://www.dfat.gov.au/treaties/index.html>. Australia has signed the Convention and the Protocol.

Australia was an active participant in the development of the Convention and its supplementary Protocols. Australia signed the Convention on 13 December 2000 and the Trafficking Protocol on 11 December 2002. The Government is considering ratification of the Protocol.

Article 3 of the Trafficking Protocol defines “Trafficking in Persons” as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation in this context is defined to include, at a minimum,

the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;” (Article 3(a)).

While the Trafficking Protocol provides that trafficking in an adult requires threats, force, coercion, abduction, deception or similar means, trafficking in children does not require any of these means. Article 3(c) of the Trafficking Protocol provides that a child is trafficked any time that a person recruits, transports, harbours or receives that child for the purposes of exploitation.

The Trafficking Protocol provides a significant international attempt to conceptualise and define trafficking in persons in international law. As such it provides an important and timely framework for international cooperation in identifying, combating and preventing trafficking in persons and a basis in the future for development of valid, internationally comparable, statistical data on the extent of the problem.

Obligations under the Trafficking Protocol

State Parties to the Trafficking Protocol recognise that effective action to prevent and combat people trafficking, especially women and children, requires a comprehensive international approach in countries of origin, transit and destination that includes measures to prevent trafficking, punish traffickers and protect victims.

Under Article 5 of the Trafficking Protocol, State Parties undertake to adopt such legislative and other measures necessary to criminalise people trafficking, as defined under Article 3. The obligation to criminalise trafficking is limited to activity that is transnational in nature and involves an organised criminal group.

In addition, the Trafficking Protocol requires State Parties to consider implementing a range of measures to protect and assist victims, to prevent revictimisation, and to combat trafficking through legislative and other measures, including through cooperative partnerships with relevant organisations and countries.

The Trafficking Protocol does not impose an obligation on Australia to permit trafficked persons to remain in Australia temporarily or permanently.

Australia made the following interpretive declaration on signature of the Trafficking Protocol:

Nothing in this Protocol shall be seen to be imposing obligations on Australia to admit or retain within its borders persons in respect of whom Australia would not otherwise have an obligation to admit or retain within its borders.

As noted, the Government is considering ratification of the Trafficking Protocol.

3. Australian legislation

Australia has already criminalised many aspects of people trafficking. Existing Commonwealth offences cover much of the activity described in the Trafficking Protocol definition of people trafficking. As with other Commonwealth offences, the following offences are of broader application than the offences required by the Trafficking Protocol (that is, they apply to conduct other than that perpetrated by organised criminal groups.)

Sexual servitude, slavery and deceptive recruiting

The Commonwealth legislation prohibiting sexual servitude, slavery and deceptive recruiting came into effect in 1999.

Sexual servitude

The Commonwealth Criminal Code makes it an offence for a person to cause another person to enter into or remain in sexual servitude. The offence is punishable by a maximum penalty of 15 years imprisonment. Where the offence is committed against a person under 18, the maximum penalty is 19 years imprisonment.

‘Sexual servitude’ is defined as the condition of a person who provides sexual services and who, because of the use of force or threats, is not free to cease providing sexual services, or is not free to leave the place or area where the person provides sexual services. ‘Sexual service’ and ‘threat’ are broadly defined.

Deceptive recruiting

The *Criminal Code* makes it an offence for a person to deceive a second person about the fact that their employment or other engagement will involve the provision of sexual services, where the first person intends to induce that second person into an engagement to provide sexual services.

This offence is punishable by a maximum penalty of 7 years imprisonment. Where the offence is committed against a person under 18, the maximum penalty is 9 years imprisonment.

Both the deceptive recruiting and sexual servitude offences apply to Australian citizens and residents who commit the offences overseas, persons who commit the conduct overseas where the sexual services are to be provided in Australia, and persons who commit the conduct in Australia where the sexual services are to be provided overseas.

Slavery

The *Criminal Code* makes it an offence to possess a slave or exercise over a slave any other powers attaching to the right of ownership, to engage in slave trading, or enter

into any commercial transaction involving a slave. It is also an offence to exercise control or direction over, or to provide finance for, slave trading or a commercial transaction involving a slave. The maximum penalty for these offences is 25 years imprisonment.

Further offences prohibit a person entering into any commercial transaction involving a slave and exercising control or direction over, or providing finance for, slave trading or a commercial transaction involving a slave, where the person is reckless as to whether the transaction or act involves slavery, a slave or slave trading. The maximum penalty for these offences is 17 years imprisonment

'*Slavery*' is defined as the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person. '*Slave trading*' is defined to include capturing, transporting or disposing of a person with the intention of reducing the person to slavery, as well as purchasing or selling a slave. These offences apply regardless of whether the conduct occurs within or outside of Australia.

Other relevant offences

Child Sex Tourism

Part IIIA of the *Crimes Act 1914* contains offences applying to Australian citizens and residents who travel overseas to engage in sexual activity with children under the age of 16.

The maximum penalty for all of these offences is 17 years imprisonment.

People smuggling to Australia

It is important to distinguish between people smuggling (also known as migrant smuggling) and people trafficking. The Protocol Against the Smuggling of Migrants by Land, Sea and Air, which also supplements the United Nations Conventions against Transnational Organized Crime, defines "smuggling in migrants" as: "the procurement, in order to obtain directly or indirectly a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."

While it is important to acknowledge this theoretical distinction, it should be noted that, at a practical level, Australia's people smuggling offences will capture many instances of trafficking in persons, namely where the trafficked persons are not brought into Australia by legal means.

Illegal entry into Australia and the organisation of illegal entrants into Australia are dealt with under the *Migration Act 1958*.

Extraterritorial people smuggling from Australia, involving Australian citizens and residents

The *Criminal Code* people smuggling offences capture Australian citizens and residents who are involved in overseas people smuggling operations, as well as those engaged in smuggling activities from Australia.

The *Criminal Code* also provides aggravated people smuggling offences, which apply stronger penalties where the smuggling occurs with the intention that the smuggled person will be exploited after entering the foreign country.

Exploitation covers slavery, sexual servitude, forced labour and the removal of organs. The aggravated people smuggling offence attracts a maximum penalty of 20 years imprisonment.

State and Territory legislation

Four of the eight States and Territories (New South Wales, South Australia, Northern Territory and the Australian Capital Territory) have offences criminalising sexual servitude, including conducting a business involving sexual servitude. A fifth jurisdiction (Western Australia) has recently introduced similar offences into its Parliament. These State and Territory offences cover purely domestic activity. The penalties for the State and Territory sexual servitude offences are comparable to the Commonwealth offence penalties.

The remaining three jurisdictions (Queensland, Victoria and Tasmania) have other criminal offences that could be used to prosecute incidents of trafficking in persons – for example, unlawful confinement and compelling a person to engage in sexual behaviour.

All States and Territories also have a range of ordinary criminal offences (including assault, unlawful confinement and sexual assault) that which could be expected to cover domestic trafficking related activity, both sexual and non-sexual.

4. Possible new offences

While Australia already has legislation which targets many aspects of people trafficking, it is envisaged that new or amended Commonwealth criminal offences will be developed to further criminalise trafficking in persons and fulfil Australia's obligations under the Trafficking Protocol.

Overseas practice can be instructive, though not always directly transferable. Several countries have recently enacted comprehensive people trafficking offences. Canada's Immigration and Refugee Protection Act 2001 created a general trafficking offence. It is an offence to knowingly organise a person to come into Canada by means of abduction, fraud, deception, or use or threat of force or coercion. It is not necessary to demonstrate that the act of bringing the person into Canada was for the purposes of exploitation.

Similarly, New Zealand legislation creates a general trafficking offence without reference to exploitation (although exploitation is an element of aggravated trafficking offences). Part 5 of New Zealand's Crimes Act 1961 makes it an offence to:

- arrange the entry of a person into New Zealand or any other state by one or more acts of coercion or deception against the person.
- arrange, organise or procure the reception, concealment or harbouring in New Zealand or any other state of a person, knowing that the person's entry into New Zealand or that state was arranged by one or more acts of coercion or deception against the person.

In the United States, the general trafficking offence created by the Victims of Trafficking and Violence Protection Act makes it an offence to knowingly recruit, harbour, transport, provide or obtain by any means any person for labor or services in violation of any of any of the provisions set out in Chapter 77 of Title 18 of the United States Code. The Chapter 77 provisions include a range of specific offences

relating to slavery, involuntary servitude, forced labor, sex trafficking of children and sex trafficking by the use of force, fraud or coercion.

Australia could adopt the approach of Canada, New Zealand and the United States by enacting a general trafficking offence. The general offence could be supplemented by other specific offences and improvements to the existing offences in the *Criminal Code*.

A general trafficking offence would criminalise bringing a person to Australia by means of threat, use of force, abduction, fraud, deception or other form of abuse of power or coercion, for the purposes of exploitation. Exploitation would be defined to include any form of sexual exploitation, forced labour or services, slavery or practices similar to slavery.

Such an offence would not be limited to sex trafficking and would cover activity such as forced labor. It would not be necessary to prove exploitation or even an intention to exploit and it would not be necessary to show that the person's entry into Australia was unlawful.

The following specific offences could supplement a general trafficking offence:

- An amended deceptive recruiting offence to apply to deception about the contractual obligations and working conditions of the position, and not merely the nature of the work (discussed above)
- An offence dealing with trafficking in children. The offence would criminalise bringing a child to Australia for the purposes of exploitation. Unlike the offence relating to the trafficking of adults, it would not be necessary to establish the use of force, fraud, deception or other form of abuse of power or coercion. Such an offence would reflect Article 3(c) of the Trafficking Protocol which provides that a child is trafficked any time that a person recruits, transports, harbours or receives that child for the purposes of exploitation.
- An offence of debt bondage, where a person is forced to work in servitude to pay off a debt but without any of the powers of ownership attaching

The existing slavery offences in the Criminal Code apply to certain situations of debt bondage, namely where the offender is exercising over the person any or all of the powers attaching to the right of ownership.

A general debt bondage offence could be based on the Protocol definition of trafficking in persons and, unlike the slavery offences, it would not be necessary to demonstrate that the person is exercising over another person any or all of the powers attaching to the right of ownership.

A general offence would make it an offence for a person, for the purposes of the exploitation of another person, to use force, fraud, deception or another form of abuse of power or coercion in ensuring or seeking to ensure that the other person pays off a debt. Such an offence would address, for example, the situation where a woman agrees to be in debt to a person in return for that person arranging her entry into Australia (whether lawful or unlawful). Once she has arrived in Australia, she is forced by that person to pay off the debt by providing sexual services to a certain minimum number of clients each day until the value of the services provided equals the amount of the debt. For the purposes of this offence, the actual existence or terms of the contract or agreement would be irrelevant.

This would reflect Article 3(b) which provides that a trafficking victim's consent to the act or acts of trafficking is irrelevant.

5. State, Territory, Local Government responses

The Commonwealth has a range of measures to combat trafficking in persons because it is a transnational crime. State, Territory and Local governments also have an important role to play in combating trafficking in persons, including in legislation, law enforcement and sex industry regulation.

State and Territory responsibility for sex industry regulation

Regulation of the sex industry is a State and Territory Government responsibility. It is important that each State and Territory Government address the issue of trafficking in persons into the sex industry, whether legal or illegal in that jurisdiction, through the relevant regulatory processes. A number of commentators and experts on trafficking in Australia have highlighted the importance of State and Territory Governments ensuring that their sex industries are not a haven for traffickers. There are many ways this can be achieved, including through appropriate use of local councils, planning laws, and health and safety regulations, as well as legislative and law enforcement approaches. This was a key theme of the Project Respect/HREOC "Stop the Traffic II" conference in Melbourne on 23-24 October 2003.

State and Territory Police Services

State and Territory police services have an important role to play in combating trafficking. Co-operation between the Australian Federal Police and State and Territory police services is excellent, and contributed to the success of investigations leading to recent arrests by the AFP.

At the most recent meeting of the Australasian Police Ministers' Council, Commonwealth, State and Territory Police Ministers agreed to develop a National Action Plan for Law Enforcement to combat trafficking in women for sexual servitude.

The Minister for Justice and Customs released the following statement describing this initiative on 3 July 2003:

National action plan to combat trafficking in women

The Commonwealth, States and Territories have agreed to develop a national action plan to combat trafficking in women for the purposes of sexual servitude after the proposal was put forward by the Minister for Justice and Customs, Senator Chris Ellison.

It was agreed at the Australasian Police Ministers' Council (APMC) meeting in Melbourne yesterday that all law enforcement agencies should cooperate in the development of a National Action Plan to enhance efforts to combat these serious crimes.

"The Commonwealth, States and Territories all have important contributions to make in identifying, investigating and prosecuting those who are engaged in trafficking in persons, and in taking the necessary preventive and legislative measures," Senator Ellison said.

In the joint resolution, all jurisdictions acknowledged that trafficking in persons for sexual servitude is a serious issue that should be addressed co-operatively through the development of a National Action Plan. The APMC agreed that:

- *all jurisdictions will review their legislation on sexual servitude and other offences related to trafficking.*
- *all jurisdictions will examine their current intelligence and information sharing practices.*
- *all jurisdictions will review current operational arrangements with the Department of Immigration and Multicultural and Indigenous Affairs to ensure victims of trafficking and sexual servitude are identified as victims of crime.*
- *the Commonwealth will work with States and Territories to develop the National Action Plan.*
- *final proposals will be referred to the Board of the Australian Crime Commission for endorsement.*

The ACC in consultation with other Commonwealth Government agencies is presently gathering intelligence on the issue of trafficking of women so that it can provide an assessment to the ACC Board and a recommendation for further action. In addition, the States and Territories have been conducting their own scoping studies since May to determine the extent of the problem in their own jurisdictions.

Senator Ellison said that the National Action Plan would enhance existing law enforcement measures to ensure that all possible steps were being taken to combat trafficking in persons for sexual servitude.

"The close cooperation between the Commonwealth, States and Territories on this important issue will build on the whole-of-government approach the Commonwealth is taking in this area," Senator Ellison said.

Commonwealth, State and Territory officials are currently developing these proposals.

6. Interaction between Commonwealth Departments and Agencies

The Attorney-General's Department has strong and productive working relationships with relevant agencies on the issue of trafficking in persons. Co-operation is close and effective.

7. Attorney-General's Department Activities

Regional diplomatic efforts to improve co-operation to combat trafficking

The Government has been a leading participant in the two Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crimes (the Bali conferences). The Ministers for Foreign Affairs, Immigration and Multicultural and Indigenous Affairs, and Justice and Customs, led Australia's delegation to both these conferences. Senior officials have participated closely in other meetings, including legislative workshops which aim to assist countries develop

suitable legislation to address trafficking in persons. With China, for example, Australia prepared model legislation on trafficking in persons. With Thailand, Australia is co-ordinating the next legislative workshop on 10-11 November 2003 which will have a specific focus on trafficking in persons. The head of the Office of the Status of Women led Australia's delegation to the Expert Group Meeting on the Prevention of International Trafficking and Promotion of Public Awareness Campaigns in the Republic of Korea on 22-23 September 2003. Australia encouraged participating states to work together to combat trafficking.

International legal instruments addressing trafficking in persons

Australia has signed the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (the Trafficking Protocol). The Government announced on 13 October 2003 that Australia will ratify this Protocol. It will also ratify the UN *Convention Against Transnational Organised Crime* and the UN *Protocol Against the Smuggling of Migrants by Land, Sea and Air*. Ratification will occur once the normal Australian treaty-making processes are complete. Upon ratification, Australia will meet or exceed the provisions of the Trafficking Protocol, making it an international leader in efforts to combat trafficking in persons.

The Australian Government has encouraged other countries to consider signing and ratifying these instruments through its co-chair statements (with Indonesia) following the first and second Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime in 2002 and 2003.

Domestic Efforts

The Government has allocated over \$630,000 for a community awareness project on trafficking in persons for sexual servitude. The project will have two major streams.

First, it will target the legal sex industry, the community health and welfare sectors, and non-government organisations with a specific focus on these issues. Second, it will provide accurate information on this issue to encourage informed community debate and raise awareness of the issue. In both streams, the goal will be to raise awareness and alertness to the issue of trafficking in persons for sexual servitude, helping the identification of potential victims or potential traffickers, and highlighting channels for reporting information to the relevant authorities for further investigation. The project will also raise awareness about the range of victim support measures, to encourage victims themselves to come forward. The project will be carefully designed in close consultation with the sex industry, outreach and advocacy organisations, service providers and professionals in the community health and welfare sector, and the media.

The Government has made telecommunications interception available in connection with the investigation of *Criminal Code* offences of slavery, sexual servitude, deceptive recruiting and people smuggling with exploitation.



<p>MINISTER FOR JUSTICE AND CUSTOMS SENATOR THE HON CHRIS ELLISON</p>	<p>MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS SENATOR THE HON AMANDA VANSTONE</p>	<p>MINISTER FOR FOREIGN AFFAIRS THE HON ALEXANDER DOWNER MP</p> <p>ATTORNEY-GENERAL THE HON PHILIP RUDDOCK MP</p>
	<p>MINISTER ASSISTING THE PM FOR THE STATUS OF WOMEN SENATOR THE HON KAY PATTERSON</p>	

NEWS RELEASE

R002/2003

Australian Government announces major package to combat people trafficking

The Australian Government has shown its commitment to combating the repugnant trade of trafficking in people by allocating more than \$20 million over four years for a major package of measures to combat this growing form of transnational organised crime.

The new measures will significantly enhance the detection, investigation and prosecution of traffickers, improve the range of support available to victims and help prevent trafficking of persons. They will complement existing efforts, including Australian Government aid program activities valued at around \$14 million.

This package is a strong, well-considered and determined response to people trafficking and sexual exploitation and builds on Australia's effective approach to fighting this crime.

One victim of trafficking is one too many. While Australia has a range of practical and legal measures already in place to combat trafficking, these new measures emphasise the Government's commitment to combating trafficking in persons by focusing on prevention, detection, prosecutions, supporting victims and international efforts.

A Commonwealth Action Plan to Eradicate Trafficking in Persons will be developed to co-ordinate these new initiatives.

This Action Plan will complement existing measures by providing additional initiatives. These are:

- A new community awareness campaign to raise awareness of trafficking issues within Australia;
- A new 23-member Australian Federal Police (AFP) mobile strike team (the *Transnational Sexual Exploitation and Trafficking Team*) to investigate trafficking and sexual servitude;
- A new Senior Migration Officer (Compliance) in Thailand, focused on trafficking in persons;
- Closer links between the AFP and Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) officers in the detection and investigation of trafficking and enhanced training on trafficking issues;
- New visa arrangements for potentially trafficked persons;
- Comprehensive victim support measures provided through contracted case managers, including appropriate accommodation and living expenses and access for victims to a wide range of social support, legal, medical and counselling services;
- Enhancement of arrangements, including access to additional support, for the small number of potential victims who may be required to remain in immigration detention;
- Development of a reintegration assistance project for trafficking victims who are returned to key source countries in South East Asia;
- Improvements to legislation to comprehensively criminalise trafficking activity;
- Legislative amendments to make telecommunications interception available for investigating trafficking offences, and
- Ratification, once all domestic requirements are in place, of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.

The existing networks developed by the Bali Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime, and the Ambassador for People Smuggling Issues, will be used to pursue enhanced region-wide cooperation to combat trafficking in persons.

A background paper is attached giving further detail on the measures outlined above.

13 October 2003

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NOTE: People **trafficking** involves people being smuggled into a country like a commodity, sometimes for the purposes of sexual exploitation, whilst people **smuggling** involves the seeking of a migration outcome where someone is paid to smuggle an individual across the border.

Trafficking in Persons - Background

Trafficking in persons is a particularly repugnant form of transnational organised crime, involving the deception and degradation of hundreds of thousands of victims around the world

Few countries are immune. The Asia-Pacific region has become a hub for trafficking in persons, particularly for the purposes of sexual servitude. All countries – whether source, transit countries, or destination countries like Australia – have a responsibility to address this issue.

In international terms, relatively small numbers of persons are trafficked into Australia (although the exact number is not known). However, trafficking in persons is a repugnant crime and the Government takes its responsibility to combat this trade seriously.

The \$20 million package announced today is a strong, well-considered and determined response to trafficking in persons and sexual exploitation. It builds on Australia's effective existing approach to fighting this crime.

Australia has strong laws criminalising sexual servitude, slavery, deceptive recruiting and people smuggling for the purpose of exploitation. These offences carry heavy penalties of up to 25 years imprisonment for slavery, 15 years for sexual servitude and 7 years for deceptive recruiting.

Where the victim of sexual servitude or deceptive recruiting is under 18 years, higher penalties apply – 19 and 9 years respectively. The people smuggling for the purposes of exploitation offence carries a penalty of 20 years. These offences are all covered by the *Proceeds of Crime Act 2002* as serious offences for which persons convicted can be required to forfeit all their property.

In recent months, the Australian Federal Police have charged eight people with sexual servitude, slavery and deceptive recruiting offences.

Commonwealth, State and Territory police services are co-ordinating the development of a national plan of action to enhance law enforcement efforts to combat trafficking in persons for sexual servitude. The AFP continues to negotiate Memoranda of Understanding with regional countries on developing police co-operation to combat transnational crime. These include trafficking in persons as a priority crime type.

Australia has also supported a number of anti-trafficking projects in our region through AusAID. The Minister for Foreign Affairs recently reaffirmed this commitment by announcing an \$8.5 million project called Asia Regional Cooperation to Prevent People Trafficking.

This project is part of a broader package of Australian development assistance aimed at combating trafficking in women and children in the Asia Pacific region worth approximately \$14 million. These efforts have continued quietly for several years and made a real impact on the problem.

These measures are complemented by the ongoing work of the Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, which is co-chaired by Australia and Indonesia (held in Bali in February 2002 and April 2003) At the second Ministerial Conference, 28 Ministers from 32 countries in the Asia-Pacific region endorsed the work of the two Ad Hoc Experts' Groups focusing on regional and international cooperation, and on legislation, law enforcement cooperation and document fraud.

Australia will participate in a legislation workshop to be run by Thailand and held in Malaysia this November. This workshop builds on a previous workshop in which China and Australia developed model legislation to develop laws criminalising people smuggling and trafficking in persons. Australia also sent a high-level delegation to the Republic of Korea's recent and very successful trafficking and public awareness workshop.

The \$20 million package announced today amounts to a significant commitment to achieving results.

Efforts need to be well co-ordinated and effective. The Australian Government recently conducted a detailed review of the approach to preventing these crimes, investigating and prosecuting the perpetrators, and supporting the victims.

The Minister for Justice and Customs personally met with some key NGO representatives to hear their ideas and perspectives. The review studied overseas practice and drew lessons from Australia's own experiences.

The Government adopted critics' best ideas on how to enhance the existing arrangements, and developed further improvements of its own.

The measures announced today include:

- The Australian Federal Police Transnational Sexual Exploitation and Trafficking Team, a mobile strike force to strengthen the capacity to actively target and investigate trafficking syndicates and make a substantial impact on combating sexual servitude in Australia. The Team will have 23 members and will be located within the Transnational Crime Coordination Centre for national coverage and flexibility.
- A new Senior Migration Officer (Compliance) in Thailand, focused on trafficking in persons. This position will be responsible for implementing Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) initiatives to combat trafficking in persons across the Asian region, including working closely with local authorities and the Australian Federal Police (AFP) in the identification of possible trafficking organisers and organisations.
- Closer links between AFP and DIMIA officers in the detection and investigation of trafficking and enhanced training on trafficking issues, ensuring that the existing close cooperation is further enhanced;

- New visa arrangements for potentially trafficked persons;
- Comprehensive victim support measures provided through a contracted case manager, including appropriate accommodation and living expenses and access for victims to a wide range of social support, legal, medical and counselling services.
- Enhancement of arrangements, including access to additional support, for the small number of potential victims who may be required to remain in immigration detention;
- Development of a reintegration assistance project for trafficking victims who are returned to key source countries in South East Asia;
- Improvements to legislation to comprehensively criminalise trafficking activity;
- Legislative amendments to make telecommunications interception available for *Criminal Code* offences of slavery, sexual servitude, deceptive recruiting and people smuggling with exploitation, and
- Ratification, once all domestic requirements are in place, of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.

The new measures address the critical areas of prevention, investigation and prosecution, and victim support and are designed to combat trafficking as well as provide comprehensive assistance to those who have already fallen victim to it.

The Government is confident this suite of measures put Australia at the forefront of best practice efforts to combat trafficking. The strategy is a further demonstration of Australia's comprehensive, coordinated commitment to fight the trafficking of persons.